

# Congress of the United States

Washington, DC 20515

December 16, 2013

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator McCarthy,

In light of the recent filed and agreed to consent decree between the EPA, Department of Justice, and Lake Michigan Car Ferry LLC, we write to seek further clarifications regarding critical issues central to our shared goal of ending the dumping of coal ash into Lake Michigan by the S. *Badger*.

As you know, the S. S. *Badger* operates between Manitowoc, Wisconsin and Ludington, Michigan. It is the last coal-fired ship operating on the Great Lakes as environment laws and technological improvements have convinced the rest of this fleet to switch to other means of operation. As part of its operations, it annually dumps hundreds of tons of coal ash into the waters of Lake Michigan. Under the Vessel General Permit (VGP) program in 2008, the EPA permitted the S.S. *Badger* to discharge coal ash through December 19, 2012.

In anticipation of the end of this exemption, the owners of the S. S. *Badger* filed an individual National Pollutant Discharge Elimination System (NPDES) permit application in November 2011, an application the EPA determined was complete in August 2012. However, the EPA has not taken any further action on the permit since making that determination.

In March of this year, the federal government then filed a complaint for Clean Water Act violations against the S.S. *Badger* arguing that the *Badger* had violated its obligations under its VGP permit. The federal government simultaneously filed a consent decree, which is essentially a settlement that will allow the S. S. *Badger* to continue dumping coal ash for two years without any permit as required under federal law. A revised agreement was filed in September in response to a large volume of public comments, including some asking the EPA to reject the permit and to further strengthen the consent decree to ensure the swift end of coal ash dumping.

We applaud the ongoing efforts by the Department of Justice and EPA to enforce the law and hold the S.S. *Badger* accountable for violations of the Clean Water Act. However, we request clarification of two key issues to ensure that the S. S. *Badger* cannot continue to escape its obligations to comply with long standing federal law, including the violations of that law which it acknowledges in the consent decree. Further violations of these laws are harmful to the environment and not in the public interest.

First, the owners of the S.S. *Badger* argue, according to the revised consent decree, that the permit allowing coal ash dumping that expired in December 2012 was administratively extended by its timely filing of an NPDES application. The EPA did not respond to this assertion. We believe that it is critical that the EPA publicly and swiftly repudiate such a ridiculous position. This is of considerable concern since the S.S. *Badger* operated for an entire season on this premise and because it may impact the status of the pending permit.

Additionally, while noting that the individual permit request was still pending, the consent decree was silent on EPA plans to take further action it. One of the federal government's arguments for pursuing a consent decree is that it would help avoid litigation that would be lengthy and costly and undermine the potential for an efficient resolution. However, it is possible that simply not acting on a pending permit may expose the agency to the very litigation it was hoping to avoid and still allow an avenue, should the S. S. *Badger* fail to comply with the consent decree, to continue dumping coal ash.

Therefore, it is critical that the EPA provide a clear answer as to its timetable for action on the pending application and if you choose not to act, a legal basis for that decision. Again, without a legal basis for deciding not to act, the EPA may find itself subject to costly and lengthy litigation which would allow the S.S. *Badger* to continue dumping coal ash in the interim.

Again, thank you for your timely consideration and response to these matters.

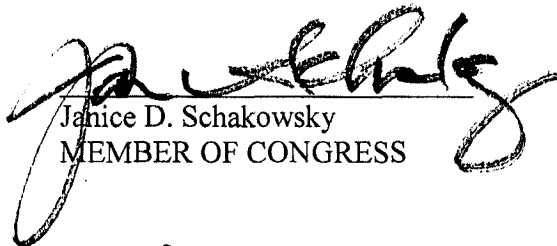
Sincerely,



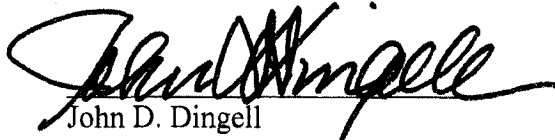
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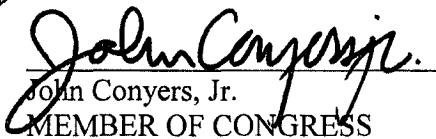
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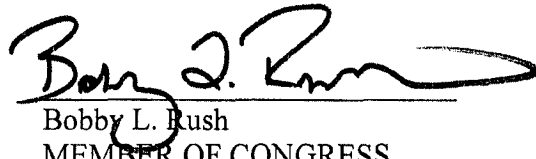
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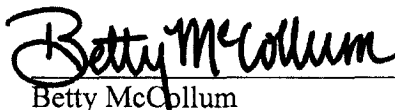
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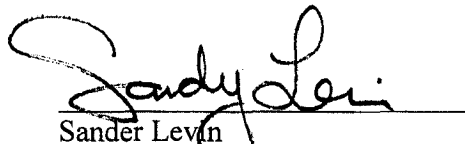
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